IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:: **J U D G M E N T** ::

S.B. CIVIL FIRST APPEAL NO.71/1989
State of Rajasthan
Vs.
Gyanchand Mehta

S.B. CIVIL FIRST APPEAL AGAINST THE JUDGMENT AND DECREE DATED 19.01.1989 PASSED BY THE LEARNED ADDITIONAL DISTRICT JUDGE NO.2, HANUMANGARH CAMP SURATGARH IN CIVIL ORIGINAL SUIT NO.8/84 - GYANCHAND MEHTA VS. STATE OF RAJASTHAN

DATE OF JUDGMENT : 21st May, 2007

P R E S E N T

HON'BLE MR. JUSTICE DEO NARAYAN THANVI

Mr. V.R.Mehta, Addl. Government Advocate.
None present for the respondent.

BY THE COURT :

This appeal has been filed by the defendant-appellant-State of Rajasthan against the judgment and decree dated 19.1.89 passed by the learned Additional District Judge No.2, Hanumangarh Camp Suratgarh in Civil Original Suit No.8/84 - Gyanchand Mehta Vs. State of Rajasthan, whereby, he decreed the suit of the plaintiff-respondent for a sum of Rs.16,800/- and

awarded interest at the rate of 6% per annum on this amount from the date of filing of the suit on 4.9.84 till its realisation.

The only point to be decided in this appeal is as to whether the amount of Rs.16,330/- against security deposit and amount of Rs.470/- against interest was deposited by the plaintiff-respondent in pursuance to the contract No. 46 of the year 1974-75 for the construction of mandi road at Gharsana between plaintiff-respondent and the Executive Engineer, Rajasthan Canal Project, Work Division-Anupgarh, Head Quarter-Suratgarh can be decreed. The plaintiff-respondent stated in his plaint that a total sum of Rs.70,933.29 paisa was due from the firm – Chetandas Kishandas of which he was a partner but the defendant-appellant State adjusted this security amount in the account of the firm, which has nothing to do with this contract of the present suit.

The learned trial court while deciding Issue No.2 in favour of the plaintiff-respondent held that dispute about the amount of Rs.70,933.29 paisa is pending with the Arbitrator and it has not been proved that this security amount has been adjusted in the account of the firm – Chetandas Kishandas by transferring it to the Executive Engineer, Sri Ganganagar. While relying upon a decision of the Hon'ble Supreme Court in Union of India Vs. Raman Iron Foundry, reported in AIR 1974 SC 1265, the learned

trial Judge held that this security amount cannot be adjusted till the payment is adjudicated by the Arbitrator. He further held that previously, the learned Additional District Judge, Ganganagar has held that this type of adjustment cannot be made in the account of the firm, when the contractor is the individual. The plaintiff-respondent proved the judgment of the learned trial judge delivered on 30.3.79 in the case of Gyanchand Mehta Vs. State of Rajasthan vide Ex.11. It was held by the learned Additional District Judge, Ganganagar that this suit is with regard to agreements Nos.74 & 6 of the years 1971-72 and the matter relating to the recovery of money from the firm Mehta Chetandas Kishadas was pending for adjudication with the Arbitrator, therefore, this amount of security cannot be adjusted in the firm. The learned trial judge came to the conclusion that the amount of security deposited in both the suits was of different agreements, therefore, it cannot be termed as res judicata.

Learned Additional Government Advocate appearing on behalf of defendant-appellant-State has argued that the sum due with the partner of the firm can be adjusted in the other account of the firm and the authority relied upon by the learned trial court in Union of India's case (supra) has been over-ruled by the Hon'ble Supreme Court in M/s. H.M.Kamaluddin Ansari & Co. Vs.

Union of India & Others, reported in AIR 1984 SC 29. Therefore, on this count, the decision of the learned trial judge is contrary to the law and be set aside.

I have gone through this ruling. In the referred case, there were some more contracts between the parties and certain payments were due under pending bills. The Union of India withheld the payments of the firm from the payments due under the pending bills of other contracts. The appellant – firm sought injunction under Section 41 read with Second Schedule of the Arbitration Act and Order 39, Rule 1 and 2 read with Section 151 of the Code of Civil Procedure. The Hon'ble Apex Court while interpreting Section 41 of the Arbitration Act came to the conclusion that Clause (a) of Section 41 of the Arbitration Act deals with the applicability of the provisions of CPC and it does not authorize the Court to pass an order of injunction. This Clause deals only with the procedural Rules. The injunction order restraining the respondents from withholding the amount due under other pending bills to the contractor virtually amounts to a direction to pay the amount to the contractor-appellant. Such an order was clearly beyond the purview of Clause (b) Section 41 of the Arbitration Act. It was further held that after insertion of words "whenever any claim for payment of a sum of money arises" were substituted by the words "whenever under this

contract any sum of money is recoverable from and payable by the contractor" in clause 18 of the agreement, the Union of India can withhold the amount of other bills and no injunction order could be passed in this regard by the Court. It was further observed that the Union of India has no objection to the grant of an injunction restraining it from recovering or appropriating the amount lying with it in respect of other claims of the contractor towards its claim for damages. By holding this, the decision of the Hon'ble Supreme Court in Union of India Vs. Raman Iron Foundry, reported in AIR 1974 SC 1265 was impliedly over-ruled.

In the present case, the dispute is only for the security amount and not for the amount of claim arising out of the agreement. The security amount is not the part of the agreement and the Court while decreeing this amount has not committed any illegality. So far as the question of res judicata is concerned, the learned trial court has rightly held that the earlier decision has nothing to do with the present suit because in both the suits, cause of action arises out of the different contracts.

In view of the aforesaid, the judgment and decree dated 19.1.1989 passed by the learned Additional District Judge No.2, Hanumangarh Camp Suratgarh calls for no interference by this

Court. Accordingly, the impugned judgment & decree of the learned trial court is maintained and the appeal stands dismissed with no order as to costs.

(DEO NARAYAN THANVI), J.

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